

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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CEDRIC WOLFE,

Plaintiff,

v.

Civil No. 9:07-CV-160  
(LEK/DRH)

BENJAMIN BERGMAN, District Attorney, and  
DAVID E. HARDER,

Defendants.

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**APPEARANCES:**

Cedric Wolfe  
Plaintiff pro se  
04-B-3250  
Oneida Correctional Facility  
Post Office Box 4580  
Rome, New York 13442-4580

**DAVID R. HOMER  
U.S. MAGISTRATE JUDGE**

**REPORT-RECOMMENDATION AND ORDER**

On April 18, 2007, pursuant to this Court's order (Docket No. 5), plaintiff Cedric Wolfe ("Wolfe" or "plaintiff") filed an amended civil rights complaint (Docket No. 6) naming the two above-captioned defendants. However, it appears from the docket that defendants have never been served with process or otherwise appeared in the action. See Docket No. 10 (summonses returned unexecuted). Pursuant to Fed. R. Civ. P. 4(m), service of process upon defendants was not completed within the 120 days allowed by Rule 4(m) and the complaint should be dismissed without prejudice for that reason; see also N.D.N.Y.L.R. 4.1(b).

In addition, it is noted that Local Rule 41.2(a) of this district provides that the failure of a plaintiff to take any action in a case for four (4) months shall be presumptive evidence of lack of prosecution. N.D.N.Y.L.R. 41.2(a); see also Fed. R. Civ. P. 41(b) (actions may be dismissed for failure of plaintiff to prosecute).

**WHEREFORE**, it is hereby

**RECOMMENDED** that if this action be dismissed for failure to complete service of process upon either defendant; and it is further


**ORDERED** that the Clerk serve a copy of this Order on the plaintiff by regular mail.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO**

**OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE APPELLATE REVIEW.**

Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: July 21, 2008  
Albany, New York

  
United States Magistrate Judge

